

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	Administrator Correspondence Dated
Universal Service Administrative Co. for)	June 22, 2018 and Other Correspondence
Duval County Public Schools (BEN 127591))	
Jacksonville, Florida)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6, 96-45
Support Mechanism)	WC 13-184

**REQUEST FOR REVIEW OF DECISION OF THE UNIVERSAL SERVICE ADMINISTRATIVE
COMPANY, SCHOOLS AND LIBRARIES DIVISION AND A REQUEST FOR RELIEF FOR
OTHER ACTIONS INITIATED BY THE UNIVERSAL SERVICE ADMINISTRATIVE
COMPANY, SCHOOLS AND LIBRARIES DIVISION BY
DUVAL COUNTY PUBLIC SCHOOLS.**

In accordance with sections 54.719 through 54.721 of the Commission's rules, Duval County Public Schools ("DCPS" or "Applicant") requests the Federal Communications Commission's ("FCC" or "Commission") review of multiple decisions by the Schools and Libraries Division of the Universal Service Administrative Company ("USAC" or "Administrator")¹. DCPS requests the Commission consider the information set forth in this appeal that supports DCPS' compliance with the Commission's competitive bidding rules and to fully reinstate the funding associated with the contract awarded under the bidding process described.

¹ See attached file [June 22, 2018 Administrator's Decision on Appeal](#) This is the letter on which the 60-day appeal deadline is officially calculated though there are multiple USAC appeals still pending and a COMAD letter just received on 8/10/18. Additionally, we seek a waiver of the Commission's 60-day appeal deadline for the FRNs associated with FY 2017/2018.

OVERVIEW

Duval County Public Schools is an urban metropolitan school district comprised of 160 schools and over 113,800 students, 65% of which are minority students and 75.22% are eligible for free and reduced priced meals.² Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts on eligible telecommunications services, Internet access, internal connections, and basic maintenance of internal connections³. Under this regulatory authority, DCPS annually submits E-rate application(s) for discounts on eligible products and services.

BACKGROUND

We are asking the Commission to review multiple Administrator's decisions to either fully deny or seek Commitment Adjustment(s) for multiple funding requests that span a 4-year period due to what they (USAC) determined (in 2017/2018) was a rule violation associated with DCPS District's procurement #ITBE-027-14 L/M and FY 2014 FCC Form 470 #s 257270001155099 and 429360001174407. In this filing, DCPS is seeking multiple relief action(s) by the Commission.⁴

TABLE 1

FY	Form 471 #	FRN	Action	Date	USAC Action		FCC Relief Sought
2014	958806	2604191	COMAD	8/10/2018			<i>Appeal</i>
2014	959069	2604839	COMAD	4/6/2018	NO ADL	<i>pending</i>	<i>Appeal</i>
2015	996782	2720544	COMAD	4/6/2018	NO ADL	<i>pending</i>	<i>Appeal</i>
2015	998583	2720890	COMAD	4/6/2018	NO ADL	<i>pending</i>	<i>Appeal</i>
2016	161006202	1699008464	COMAD	3/27/2018	USAC ADL	6/22/2018	<i>Appeal</i>
2015	161013642	1699036313	COMAD	3/27/2018	USAC ADL	6/22/2018	<i>Appeal</i>

² Statistics available at: <https://dcps.duvalschools.org/domain/5268>

³ 47 C.F.R. §§ 54.502, 54.503

⁴ See attached file [Duval County Recap of USAC Actions 2014-2017](#)

TABLE 2

FY	Form 471 #	FRN	Action	Date	FCC Relief Sought
2017	171000071	1799000100	FCDL Denial	1/13/2018	<i>Waiver of Appeal Deadline and Appeal</i>
2017	171004528	1799007703	FCDL Denial	1/13/2018	<i>Waiver of Appeal Deadline and Appeal</i>

DISCUSSION

It appears that USAC has determined that DCPS' 2014/2015 FCC Form 470s and RFP #ITBE-027-14 L/M were conducted in violation of the provision in the Queen of Peace Order⁵ requiring an 'or equivalent' statement in any service description that includes a particular manufacturers name, brand, product or service.

*"...FCC rules established in the **Queen of Peace Order**, released and adopted on December 7, 2011, prohibit applicants from including a particular manufacturers name, brand, product or service in an FCC Form 470 or request for proposal (RFP) unless they also use the words "or equivalent" in such a description. It was determined that a specific manufacturer/service provider was included in a RFP issued in conjunction with the FCC Form 470, without the proper indication that services from equivalent manufacturers/service providers would be considered and you have violated the competitive bidding process..."*⁶

At the outset, we are compelled to note that during the exhaustive research and data gathering effort undertaken to prepare this pleading, we found several very specific references in the RFP document in question that were somehow not acknowledged by USAC nor 'pushed' by the DCPS E-rate contact⁷ at the time the 2017/2018 Selective Review Information Request was completed and its finding(s) then applied to all other funding requests associated with the subject solicitation.

⁵ <https://www.fcc.gov/document/queen-peace-order>

⁶ See attached files:

[Duval COMAD Letters ALL](#)
[FCDL 171000071 - DUVAL COUNTY SCHOOL DISTRICT](#)
[FCDL 171004528 - DUVAL COUNTY SCHOOL DISTRICT](#)

⁷ The employee responsible for E-rate in DCPS had never experienced a SRIR and was confused and frustrated. He retired from the District soon after the 2017 FRNs were denied

Page 2 of solicitation #ITBE-027-14 L/M⁸, General Conditions, item #5 reads as follows:

“ 5. OR ACCEPTABLE SUBSTITUTION: *Even though a particular manufacturer’s name or brand is specified, bids will be considered on other brands or on the product of other manufacturers. On all such bids the bidder shall indicate clearly the product (brand and model number) on which he/she is bidding, and shall supply a sample or sufficient data in detail to enable an informed comparison to be made with the particular brand or manufacturer specified...”*

Items 6, 7, and 8 of the General Conditions continue to describe the robust process by which DCPS would evaluate any ‘alternative’ proposal.

In preparing for the release of solicitation #ITBE-027-14L/M the District used the only method they had available to provide an accurate representation of the services desired, without compromising the neutrality of the competitive bidding process by simply using their incumbent vendor’s invoice descriptions to create the “Bid Proposal Form” that begins on page 19 of the solicitation. However, and again, as we contended earlier, we are convinced the SRIR reviewer was specifically looking for the words “or equivalent” in the same ‘phrase’ as the description of service(s) included despite the following statement included at the top of the page:

BID PROPOSAL FORM
ITBE-027-14/LM

Name of Bidder: _____

For purposes of evaluation, this form will be interpreted as follows:

Unit price: Unit price should be numeric. Unit prices left blank will be deemed “no bid”, and a unit price of \$0 will be deemed “included at no charge”.

Item Bid: Item bid should be the manufacturer & model # or name of product you will supply if awarded. If left blank or “as specified” is entered the item will be considered to have insufficient information to evaluate.

It is clear in three different locations in #ITBE-027-14 L/M that DCPS was willing to and would accept whatever proposed solution that was functionally equivalent.

Additionally, page 9 of the solicitation document states:

⁸ See attached file [ITBE 027-14-LM RFP BID TELCOM SERVICE-VOICE](#)

Services required herein will commence July 1, 2014. The period from date of award through June 30, 2014 is to allow for any transition/set-up requirements necessary to insure a smooth transition of services between AT&T, whose current contract ends June 30, 2014, and the awarded contractor for this bid, if applicable.

This statement further supports that DCPS had neither “preselected” AT&T as the service provider NOR did it have a “propensity to award” the contract to AT&T.

The fundamental error/fatal flaw appears to be the failure to include two words, “OR EQUIVALENT” in direct correlation with the “trade name” used in the services description. The omission of these TWO WORDS could potentially cost Duval County Public Schools more than \$1,600,000.00 in eligible E-Rate support and that is an unreasonably punitive result considering the information and supporting documentation provided earlier in the document and throughout the rest of the document provide the assurance USAC and or the Commission needs to validate a fair and open competitive bidding process.

It seems as if USAC, during its 2017/2018 SRIR Competitive Bidding Review, was applying the 2017 ‘standard’ that has grown over the course of the six years since the Commission’s adoption of The Queen of Peace Order to a Form 470 and RFP process that was conducted five years prior (for E-rate Funding Year 2014) and frankly, that is an unfair and unreasonable bar to set.

As we are all aware, implementation of the E-rate Productivity Center for Funding Year 2016/2017 instituted a requirement that FCC Form 470 applications be completed using pre-populated ‘drop down’ options for Category One and Category Two service items. For Category Two service items, USAC opted to include the words ‘or equivalent’ behind every named manufacturer’s product except “other”. This has been a pretty great enhancement for applicants seeking Category Two funding since 2016 as it inherently drills the ‘or equivalent’ requirement instituted by the Queen of Peace Order into each applicant’s competitive process.

While it has been great for Category Two applicants since 2016, it was a sum zero change for Category One applicants since 2016 and, for Funding Years prior to 2016, it was completely non-existent. In fact, the Form 470(s) in question as part of this filing were filed in 2013 for the 2014/2015 Funding Year and they were completely different than what today's reviewers are accustomed to seeing. It is for this reason, that we believe the 2017/2018 SRIR Reviewer was unable to 'get past' the fact that the two words were not included in the context in which they were accustomed to seeing it and for that reason alone, determined there was a violation of the competitive bidding process updated with the release of the Queen of Peace Order despite being provided alternative 'acceptable substitution' language references during the SRIR for the 2017/2018 Form 471 applications and funding requests noted in Table 2 on page 3 of this document.⁹

Unlike Queen of Peace High School¹⁰, Duval County DID NOT use a particular service provider's trade name on their establishing FY 2014/2015 FCC Form 470 numbers 429360001174407 and 257270001175099. In fact, Duval County was intentionally vendor/service provider neutral in the language used to indicate they were seeking competitive responses for the following services:

Form 470 #429360001174407

Block 2: Summary Description of Needs or Services Requested	
8 Telecommunication Services	
If you check YES to indicate you have a Request for Proposals (RFP) that specifies the services you are seeking, your RFP must be available to all interested bidders for at least 28 days. If your RFP is not available to all interested bidders, or if you check NO and you have or intend to have an RFP, you risk denial of your funding requests.	
a <input checked="" type="checkbox"/> YES, I have released or intend to release an RFP for these services. It is available or will become available on the Internet at: www.demandstar.com or via (check one) <input type="checkbox"/> the contact person in Item 6 or <input type="checkbox"/> the contact person listed in Item 12 Your RFP Identifier: ITBE-027-14/LM	
b <input type="checkbox"/> NO, I have not released and do not intend to release an RFP for these services.	
Service	Quantity and/or Capacity
Centrex	Centrex Services for 188 schools and admin locations

⁹ See attached file [Response 127591 DUVAL COUNTY SCHOOL DISTRICT Intent to Deny 12-04-17 121317 0937](#)

¹⁰ <https://www.fcc.gov/document/queen-peace-order> para 4 n. 16

Form 470 #257270001175099

Block 2: Summary Description of Needs or Services Requested	
8 Telecommunication Services	
<i>If you check YES to indicate you have a Request for Proposals (RFP) that specifies the services you are seeking, your RFP must be available to all interested bidders for at least 28 days. If your RFP is not available to all interested bidders, or if you check NO and you have or intend to have an RFP, you risk denial of your funding requests.</i>	
a <input checked="" type="checkbox"/> YES, I have released or intend to release an RFP for these services. It is available or will become available on the Internet at: www.demandstar.com or via (check one) <input type="checkbox"/> the contact person in Item 6 or <input type="checkbox"/> the contact person listed in Item 12 Your RFP Identifier: ITBE-027-014/LM	
b <input type="checkbox"/> NO, I have not released and do not intend to release an RFP for these services.	
Service	Quantity and/or Capacity
SS7	48 Clay St. CO
DS1 ESA	2 - 48 ESA for 1701 Prudential
SS7	192 San Marco CO

The “Description of Services” provided on the associated FCC Form 470s are generic enough that prospective service providers would clearly understand what type of services Duval County was seeking competitive proposals for and in no way could be construed as a violation of the FCC’s competitive bidding rules nor as in conflict with USAC guidance available at the time.

It is only in the available solicitation (“RFP”) document(s) that USAC has determined a potential ‘rule’ violation has occurred and we believe very strongly that their denial is based solely on the fact that the words “or equivalent” were not included in direct correlation with the service provider’s name when the service provider’s trade name was used as method of establishing functionality only.


It is also important to note that Duval County Schools relied heavily upon USAC Training and Outreach to maintain compliance with FCC rules throughout the E-Rate process as they had only one staff member dedicated for completion all of their E-Rate application processes.

The FCC’s Queen of Peace Order in December, 2011 created a paradigm shift in the E-Rate procurement process and USAC guidance regarding this pivotal change in its Competitive Bidding protocol was frankly, not very vigorous.

A review of the archives in USAC’s “Outreach and Training” section of their website for Fall applicant training conducted in 2012 (first year of new compliance rules after codification of a new RULE) and, more importantly, in 2013 (in advance of the 2014/2015 Funding Year in which Duval

County conducted the subject procurement) yields only a single slide with ONE bullet point regarding the ‘or equivalent’ requirement in each of the training sessions.

2012 Fall Applicant Training¹¹




Fair and Open Competition

FCC Form 470 and RFP Issues

- **New requirement for FY 2013 FCC Forms 470 and RFPs**
 - Commission’s competitive bidding rules prohibit applicants from including a particular manufacturer’s name, brand, product or service in an FCC Form 470 or request for proposals (RFPs) unless they also use the words “or equivalent” in such a description.
 - “XYZ manufacturer’s high-speed router model 345J or equivalent” meets new requirement.
 - Applicants must carefully consider all of the bids received before selecting a winning bidder.

Program Compliance | 2012 Schools & Libraries Fall Applicant Trainings 15

2013 Fall Applicant Training¹²



Fair and Open Competition

Imposing Restrictions

- Applicants may set some eligible services requirements
 - Applicants may require service providers to provide services that are compatible with one kind of system over another (e.g. Brand X compatible)
- Bidder disqualification criteria must be spelled out in FCC Form 470 and/or RFP and be available to all
- **Cannot list specific make and model of services sought without also allowing equivalent products and/or services to be bid**
 - “XYZ manufacturer’s router model 345J or equivalent”

Ensuring Program Compliance | 2013 Schools and Libraries Fall Applicant Trainings 14

¹¹ <https://www.usac.org/about/tools/TrainingArchive/trainingDetails.aspx?eid=147> See “Program Compliance” slide deck

¹² <https://www.usac.org/about/tools/TrainingArchive/trainingDetails.aspx?eid=185> See “Ensuring Program Compliance” slide deck

As indicated, the guidance from USAC was not fully developed to describe any and all instances where an 'or equivalent' designation might have been required. The two slide references speak to equipment only with no relevant association to a need for an 'or equivalent' statement for telecommunications SERVICES that frankly are what they are. Phone service(s) are not typically equivalent to anything else. They simply are.

REMINDER: More than \$1.6M in E-Rate funding is being recovered, denied or otherwise withheld from DCPS for an alleged competitive bidding violation that is not actually a violation considering the additional provisions in #ITBE-027-14 L/M that clearly describe the intent and willingness of the Applicant to accept 'equivalent' proposals/solutions.

Duval County Public Schools requests a Waiver of the Appeal Filing deadline¹³ for the FY 2017 FRNs noted in Table 2 on page 3 of this document considering the District employee responsible for E-Rate took an early retirement after being dealt the blow of complete denial by USAC for a contract that was already in its 5th year and there was no one at the District who knew what, if anything, to do about these decisions. It is also noteworthy that when DCPS' 2017 FCDLs were issued by USAC in EPC on January 13, 2018, the FCDLs were still in the .csv format with an additional PDF supplement that described when, where and how an applicant could file an appeal on a particular decision. Again, this is for 2017/2018 when the E-Rate Productivity Center portal was still in absolute chaos. We are unsure whether the employee had ever received a denial from USAC during his tenure and it is entirely possible he did not download the supplemental document with further instructions.

¹³ §54.720 Filing Deadlines:

(a) An affected party requesting review or waiver of an Administrator decision by the Commission pursuant to §54.719, shall file such a request within sixty (60) days from the date the Administrator issues a decision.

(b) An affected party requesting review of an Administrator decision by the Administrator pursuant to §54.719(a), shall file such a request within sixty (60) days from the date the Administrator issues a decision.

Upon approval of such Waiver, we request the 2017 FRNs be included in the blanket appeal's merits presented in response to the additional actions taken by USAC (Table 1 on page 2) as a result of the FCDL denials.

If the Commission cannot see its way to approval of DCPS' appeal on its merits, DCPS requests a waiver of §54.503 and the Queen of Peace Order provision as there is no suggestion that DCPS committed waste, fraud or abuse of the E-Rate program and denial of these funding requests has placed undue hardship upon the students served by DCPS and continued denial of this critical funding does not further the goals of the program nor is it in the public's best interest.

We are confident our request for relief in this appeal is fully supported by the facts and circumstances described and respectfully request the Commission direct USAC to approve the requests and discontinue all recovery actions.

Regards,

/s/

Kimberly Friends

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